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EXAMINER

PATEL, NIKETA I

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/835,164
Filing Date: April 13, 2001
Appellant(s): ZHANG, SHUJIN

MAILED

SEP 20 2007

Technology Center 2100

Thomas Van Zandt, Reg. No. 43,219
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/7/2007 appealing from the Office action mailed 05/30/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Interim Guidelines for Examination of Patent Applications (OG Notices: November 2005), Annex IV, Computer-Related Nonstatutory Subject Matter, pages 52-53.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 67-94 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The independent claims 67 and 74 recite various types of modules through out the claimed language, for example: a host identifier retrieving module, a host identifier matching module, a host state maintenance module and address insertion module. The independent claims 81 and 88 recite various types of means through out the claimed language, for example: means for retrieving, means for matching, means for maintaining and means for transmitting.

The appeal brief, pages 7-9, indicates that the various modules and means may be hardware and/or software. The specification (pages 8-9) indicates that the components, process steps, and/or data structures may be implemented using various types of operating system, computing platforms, computer programs, and/or general purpose machines. Therefore, claims 67-94 are software per se, and fall within a category of non-statutory subject matter.

As per the Interim Guidelines (pages 52-53), data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention, which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a

data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

(10) Response to Argument

The Appellant argue, that claims 67-80 are not directed to data structure and that they are directed to statutory subject matter. To support this argument, the Appellant points to the Interim Guidelines and the explanation of a data structure described therein.

The Appellant admits, that various types of modules recited in claims 67-80 may be hardware and/or software (see pages 7-9 of the Appeal Brief filed on 6/7/2007.) Furthermore, the specification, pages 8-9, indicates that the components, process steps, and/or data structures may be implemented using various types of operating system, computing platforms, computer programs, and/or general purpose machines. In light of the specification and the Appellant's admission, claims 67-80 are software per se and therefore directed to non-statutory subject matter.

The Appellant argue, that claims 81-94 are not directed to data structure and in any case recites structural and functional interrelationships that remove it from the purview of non-statutory descriptive per se material. Independent claims 81 and 88 are in means-plus-function format.

Claims 81-94 do not recite **structural** and functional interrelationships, as the specification, pages 8-9, clearly indicates that the components, process steps, and/or data structures may be implemented using various types of operating system, computing platforms, computer programs, and/or general purpose machines. Furthermore, the Appellant admits, that

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various types of means recited in claims 81-94 may be hardware **and/or software** at pages 7-9 of the Appeal Brief filed on 06/07/2007. In view of the fact that, the 'means' can be implemented using software, there is a lack of **structural** and functional interrelationships. Therefore, claims 81-94 are software per se and therefore directed to non-statutory subject matter.

(11) Related Proceeding(s) Appendix

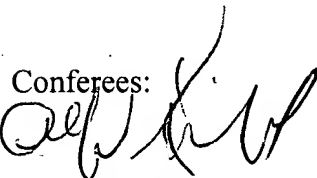
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Niketa Patel

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